

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

TIMOTHY MICHAEL CABAN,

Defendant and Appellant.

D052830

(Super. Ct. No. SCE272707)

APPEAL from a judgment of the Superior Court of San Diego County, William J. McGrath, Jr., Judge. Affirmed.

Timothy Michael Caban entered a negotiated guilty plea to battery with serious bodily injury (Pen. Code,<sup>1</sup> § 243, subd. (d)) and admitted personally inflicting great bodily injury (§ 12022.7, subd. (a)) and committing a hate crime (§ 422.75, subd. (a)). Caban also admitted he had a prior serious/violent felony or strike conviction (§ 667, subds. (b)-(i)) and a prior serious felony conviction (§ 667, subd. (a)(1)). The plea

---

<sup>1</sup> Statutory references are to the Penal Code.

bargain called for a stipulated prison sentence of 17 years for this case and a companion case. At sentencing, the trial court sentenced Caban to 12 years in prison in this case by imposing the low term of two years on the battery, which was doubled under the Three Strikes Law, plus a five-year enhancement for the prior serious felony (§ 667, subd. (a)(1)) and a three-year enhancement for inflicting great bodily injury.<sup>2</sup> The court stayed imposition of the hate crime enhancement pursuant to the stipulation of the parties. (§ 654.) In addition, the court imposed a restitution fine of \$3,400 (§ 1202.4, subd. (b)) and imposed victim restitution (§ 1202.4, subd. (f)) in the amount of \$1,088.86, subject to modification at a later date if additional bills were submitted. The court awarded Caban a total of 240 days custody credit.

Caban did not obtain a certificate of probable cause.

## FACTS

On July 8, 2007, Caban and two companions went to Don's Cocktail Lounge in Lakeside to drink and shoot pool. When the trio left, Caban took off his shirt. Caban had a number of tattoos on his body, including a skull and a swastika. Caban, walking at a fast pace, led the way and was the first of the three to exit the bar.

Sylvester Wilson, a Black man, was standing outside next to the bar door, smoking a cigarette and talking to Frank Cotta. Without provocation, Caban inflicted an uppercut

---

<sup>2</sup> Caban received a consecutive five-year prison term in the companion case.

punch to Wilson's chin. Wilson collapsed and his head hit the pavement. Wilson was hospitalized with severe brain injuries.

## DISCUSSION

Appointed appellate counsel has filed a brief setting forth evidence in the superior court. Counsel presents no argument for reversal, but asks this court to review the record for error as mandated by *People v. Wende* (1979) 25 Cal.3d 436. Pursuant to *Anders v. California* (1967) 386 U.S. 738, counsel refers to as possible, but not arguable, issues: (1) whether the trial court imposed an improper sentence; (2) whether the trial court properly awarded custody credits; (3) whether the probation officer included improper material in her report; (4) whether trial counsel provided ineffective assistance at the sentencing hearing; (5) whether the trial court determined victim restitution properly; and (6) whether the trial court properly imposed the restitution fines.

We granted Caban permission to file a brief on his own behalf. He has not responded.

A review of the record pursuant to *People v. Wende, supra*, 25 Cal.3d 436 and *Anders v. California, supra*, 386 U.S. 738, including the possible issues referred to by appellate counsel, has disclosed no reasonably arguable appellate issues. Competent counsel has represented Caban on this appeal.

DISPOSITION

The judgment is affirmed.

---

NARES, J.

WE CONCUR:

---

BENKE, Acting P. J.

---

HALLER, J.